IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No. 634 of 2006
In
COMPANY PETITION No. 157 of 1989
With
COMPANY APPLICATION No. 77 of 2007
With
COMPANY APPLICATION No. 208 of 1999
With
COMPANY APPLICATION No. 377 of 2002
In
COMPANY PETITION No. 157 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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INDUSTRIAL DEVELOPMENT BANK OFINDIA - Applicant(s)
Versus
O.L. ARYODAYA GNG & MFG. CO. LTD. & 4 - Respondent(s)

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Appearance :
MR BH BHAGAT for Applicant(s) : 1,
OFFICIAL LIQUIDATOR for Respondent(s) : 1,
MS AMEE YAJNIK for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2 - 3.
MR RM DESAI for Respondent(s) : 4,
MR DS VASAVADA for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 02/04/2007
ORAL JUDGMENT

Company Application No. 634 of 2006 is filed by IDBI claiming to be one of the secured creditors of the Company [in liqn.], i.e., Aryodaya Ginning & Manufacturing Co.Ltd., for an appropriate order directing the Official Liquidator of the company [in liqn.] to disburse an amount out of the amount realised by sale of properties of the company [in liqn.]. Similar prayer is made by the Textile Labour Association for and on behalf of the workers of the company [in liqn.] in Company Application No. 77 of 2007 and other applications.

2. Heard the learned advocates appearing on behalf of respective parties, i.e., IDBI, IFCI, SBI and Textile Labour Association; Mrs. Ami Yagnik, learned advocate appearing for the Official Liquidator; and Shri Pratik Jesani, learned advocate appearing on behalf of Shri Navin Pahwa, learned advocate for Kotak Mahindra Bank Ltd., [as assignee of ICICI Bank's debt]. It is submitted that pursuant to the earlier

order passed by this Court dated 26.6.2000 in Company Application No. 208 of 1999 as well as the order dated 14.10.2003 passed in Company Application No. 377 of 2002, the amount realised by selling the properties of the company [in liqn.] were disbursed amongst the secured creditors in the ratio of 60:40 and 50:50 respectively. It has been submitted by the learned advocates appearing on behalf of the respective parties, more particularly IFCI, IDBI, SBI, Textile Labour Association that at present the Official Liquidator is having a sum of Rs. 14,57,00,000 in the company's account; that they have determined final percentage ratio amongst themselves; and it has been decided that the amount be disbursed in the ratio of 70:30 amongst the workers and the secured creditors. It is further submitted that the same percentage ratio be applied in respect of past payment also. It is submitted that considering the final percentage ratio, i.e., 70:30 determined for payment amongst the workers and secured creditors and considering the past payment an amount of Rs.

92,31,600 has been paid in excess to the secured creditors; and that it is agreed between the parties, i.e. Secured Creditors that while making payment now, the aforesaid amount of Rs. 92,31,600 may be adjusted. It is further submitted that considering the final percentage ratio as 70:30 if a sum of Rs. 14 Crores is ordered to be disbursed amongst the secured creditors and workers, the workers will be entitled to get Rs. 10,72,31,600 and the secured creditors will be required to be paid Rs. 3,27,68,400 [after adjustment of Rs. 92,31,600]. It is further submitted that earlier the ICICI Bank Ltd., was paid the amount out of the amount paid to the SBI as Lead Institution as there was no dispute with regard to substitution at that stage, however after 2003 it is reported that the ICICI Bank Ltd., has assigned their debts in favour of Kotak Mahindra Bank Ltd., and their substitution and/or dispute with regard to substitution is yet to be resolved by this Court and therefore whatever amount required to be paid to the ICICI Bank Ltd., should be set apart by

the Official Liquidator in separate fixed deposit account so that ultimately if the dispute is resolved in that case the said amount can be paid either to ICICI Bank Ltd., and/or Kotak Mahindra Bank Ltd and by doing so the interests of ICICI Bank Ltd would also be protected. Shri Baiju Bhagat, learned advocate appearing on behalf IFCI and IDBI and Shri Roshan M. Desai, learned advocate appearing on behalf of SBI, and Shri D.H. Vasavada, learned advocate appearing on behalf of Textile Labour Association have submitted that they have no objection if the amount is disbursed as stated above and the amount alleged to be payable to Kotak Mahindra Bank Ltd and ICICI Bank Ltd., is set apart by the in a separate fixed deposit account.

3. Mrs. Amee Yagnik, learned advocate appearing on behalf of the Official Liquidator has submitted reports of the Official Liquidator dated 16th January 2007, 15th March 2007 and 22nd March 2007. It is submitted by her that vide order dated 26.6.2000 passed by this Court in

Company Application No. 208 of 1999, this Court directed the Official Liquidator to disburse an amount of Rs. 1.45 Crores amongst the workers of the company, and further directed the O.L., to forward cheque of Rs. 1.55 Crores to SBI who in turn shall disburse the same amongst the secured creditors of the company having First Charge on the assets of the company on ad-hoc basis. It is submitted that accordingly the amount aggregating to Rs. 3 Crores was disbursed amongst the workers and the secured creditors of the company. It is also submitted in the report that by another order dated 14.10.2003 passed in Company Application No. 377 of 2002, this Court directed the Official Liquidator to disburse 50% of the amount lying with the Official Liquidator amongst the secured creditors and workers of the company on ad-hoc basis by retaining a sum of Rs. 10 lakhs, and accordingly an amount of Rs. 68.29 lakhs each was disbursed amongst the secured creditors and the workers as per the ratio as was decided by the SBI. It is further submitted that

at present that an amount of Rs. 14.57 Crores is lying with the Official Liquidator in the company's account, out of which an amount of Rs. 14 Crores may be disbursed amongst the workers and secured creditors of the Company in the ratio as mentioned by the Official Liquidator in his report dated 16th January 2007 submitted in Company Application No. 634 of 2006 and which ratio may be applicable for the past payment also.

4. Heard the learned advocates appearing for the parties. It appears from the record that as per the report submitted by the Official Liquidator dated 16th January 2007 on the basis of the report submitted by the Chartered Accountant according to the final percentage ratio of 70:30 the amount is to be disbursed in favour of the workers and secured creditors and the said ratio will be applicable to the past payment also. It is also borne out from the record that so far as the percentage of payment to be made amongst the

secured creditors and which is agreeable to all the secured creditors is concerned, it would be 7% in case of SBI; 44% to IDBI; 27% to ICICI Bank Ltd; and 22% to IFCI. It is submitted that earlier the amount was disbursed by SBI amongst the secured creditors at the above rate. As stated above, the Official Liquidator is having Rs. 14.57 Crores in the company's account, out of which the amount of Rs. 14 Crores can be disbursed amongst the secured creditors and workers and the balance amount of Rs. 57 lakhs may be retained by the Official Liquidator towards expenditure for which the Official Liquidator is required to submit a fresh report within the period of one week from today.

5. Considering the above, the Official Liquidator is directed to disburse an amount of Rs. 10,72,31,600 amongst the workers of the company [in liqn.] by Account Payee cheque to each worker on proper identification by representative/s of the Textile Labour

Association and in cases where there is any dispute, on proper identification and satisfaction by the Official Liquidator. So far as the amount to be disbursed in favour of the secured creditors is concerned, the Official Liquidator is directed to pay 7% of Rs. 3,27,68400 to SBI; 44% of Rs. 3,27,68,400 to IDBI; and 22% of Rs. 3,27,68,400 to IFCI by Account Payee cheques on furnishing usual undertakings by the concerned Secured Creditors that if ultimately in future it is found that any amount is paid in excess to them the same shall be returned/deposited with the Official Liquidator immediately or within the period of one week along with interest at the rate prevalant at the relevant time and in any case not less than minimum rate of 10% p.a. So far as the amount payable to ICICI Bank/Kotak Mahindra Bank Ltd., [assignee of ICICI Bank's debts] is concerned, it would be 27% of Rs. 3,27,68,400, and the Official Liquidator is directed to set apart the said amount and invest the said amount

in a Fixed Deposit account preferably with ICICI Bank Ltd with cumulative interest option initially for a period of six months, and as and when the dispute with regard to substitution of Kotak Mahindra Bank Ltd in place of ICICI Bank is resolved, the said amount can be paid to them on the basis of decision that may be taken by this Court on the substitution application in favour of ICICI Bank Ltd/Kotak Mahindra Bank Ltd. The entire exercise be completed within the period of two weeks from today by the secured creditors, and within the period of six weeks from today so far as workers are concerned. It will be open for the Official Liquidator to prematurely withdraw the Fixed Deposit for making the aforesaid payment and/or to open a Dividend Account for the purpose of making payment as stated above. The Official Liquidator is further directed to file fresh report within the period of one week from today in connection with the expenditure already incurred by the Official Liquidator and the amount yet to be

deducted/recovered by the Official Liquidator towards commission available under the provisions of the Companies Act, 1956 and/or the Rules thereto.

6. With these, all these applications are disposed of.

[M.R. Shah, J.]

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